

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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FRANCARL REALTY CORP., et al.,

Plaintiffs,

- against -

THE TOWN OF EAST HAMPTON,

Defendant.

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**REPORT AND
RECOMMENDATION**

CV 05-1792 (LDW) (JO)

JAMES ORENSTEIN, Magistrate Judge:

This case involves claims, *inter alia*, that Local Law No. 40 of 1997, amending various provisions of the East Hampton Town Zoning Code with respect to the operation of vehicle and passenger ferries in the Town of East Hampton, violates the Commerce Clause of the United States Constitution and impermissibly burdens interstate commerce. *See* Docket Entry ("DE") 1 ¶¶ 51-70. The same claim, made by different plaintiffs against the same defendant, is currently pending before the Honorable Sandra J. Feuerstein, United States District Judge. *See Town of Southold, et al. v. Town of East Hampton*, CV 04-3860 (SJF) (WDW), DE 1 ¶¶ 44-59.

At the initial conference in the instant case, the parties' counsel reported that a motion for summary judgment on the Commerce Clause claim will soon be fully brief and filed in the *Town of Southold* matter. Counsel for plaintiff in this case stated that he is in a position to file and brief a similar motion in this case, and to do so pursuant to a similar schedule. To avoid a risk of inconsistent results on that issue, which is potentially dispositive of the entire controversy in this case, I respectfully recommend that this case be reassigned to Judge Feuerstein pursuant to Local Civil Rules 50.3 and 50.4, so that she can address the same issue in both cases at the same time.

This Report and Recommendation is being filed on the Court's ECF system. Any objections to this Report and Recommendation must be filed with the Clerk of the Court with a courtesy copy to me within 10 days of such filing. Failure to file objections within this period waives the right to appeal the District Court's Order. *See* 28 U.S.C. §636 (b)(1); Fed. R. Civ. P. 72; *Beverly v. Walker*, 118 F.3d 900, (2d Cir. 1997); *Savoie v. Merchants Bank*, 84 F.2d 52, 60 (2d Cir. 1996).

SO ORDERED.

Dated: Central Islip, New York
July 7, 2005

/s/ James Orenstein
JAMES ORENSTEIN
U.S. Magistrate Judge